

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ALONZO MARTINEZ,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

NO: 12-CV-3094-TOR

ORDER GRANTING MOTION TO
VOLUNTARILY WITHDRAW
PETITION AND DISMISSING
ACTION

BEFORE THE COURT is Petitioner's Motion to voluntarily withdraw his habeas petition, ECF No. 12. By Order filed March 20, 2013, ECF No. 10, the Court ordered Mr. Martinez to show cause why this action should not be dismissed. Petitioner had failed to present his petition on the appropriate form; he did not name his custodian as the proper party respondent; and he had not shown that each of his federal habeas claims of ineffective assistance of counsel had been exhausted in the state courts.

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ORDER GRANTING MOTION TO VOLUNTARILY WITHDRAW PETITION
AND DISMISSING ACTION -- 1

1 On April 18, 2013, Petitioner filed a response, ECF No. 11, apologizing for
2 his lack of communication and indicating his physical and mental ailments had
3 prevented him from properly preparing documents and meeting deadlines.
4 Petitioner also requested a thirty day extension of time. On May 1, 2013, however,
5 Mr. Martinez submitted a "Motion to Withdraw 28 U.S.C.A. 2254 Petition at this
6 time, to possibly be refilled at a later date," ECF No. 12.

7 Petitioner asks to withdraw his § 2254 petition, stating he had assumed that
8 he did not have to exhaust all of his state court remedies before filing a § 2254
9 petition. He indicates he currently has a Personal Restraint Petition pending in the
10 state courts, and, therefore, believes he has not exhausted his state court remedies.

11 Mr. Martinez is proceeding *pro se* in this action and has paid the \$5.00 filing
12 fee; Respondent has not been served. Accordingly, **IT IS ORDERED** Petitioner's
13 Motion, ECF No. 12, is **GRANTED** pursuant to Rule 41(a), Federal Rules of Civil
14 Procedure, and this action is **DISMISSED without prejudice**.

15 If Mr. Martinez chooses to file a future habeas petition, he should be mindful
16 of the federal limitations period for doing so under 28 U.S.C. § 2244(d). On
17 October 30, 2012, Petitioner notified the Court of his release from the Washington
18 State Penitentiary, ECF No. 6. Therefore, if he chooses to file a future habeas
19 petition, he would also need to demonstrate that he continues to meet the "in
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1 custody" requirement of 28 U.S.C. § 2254(a). *See Jones v. Cunningham*, 371 U.S.
2 236, 240-242 (1963).

3 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
4 Order, enter judgment, forward a copy to Petitioner at his last known address and
5 CLOSE the file.

6 **DATED** May 24, 2013.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge